



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1164

**Nshuti Samuel Rugerinyange
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

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| Before: | Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu |
| Case No.: | 2020-1479 |
| Date: | 29 October 2021 |
| Registrar: | Weicheng Lin |

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| Counsel for Appellant: | Self-represented |
| Counsel for Respondent: | Mr. Noam Wiener |

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Nshuti Samuel Rugerinyange is an independent contractor for the United Nations Office for Project Services (UNOPS) in Kigali, Rwanda, having been a staff member of the Organization prior to his engagement as an independent contractor. He filed an application for suspension of action pending management evaluation before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) against the Secretary-General's decision to place him on administrative leave with pay during an investigation for possible misconduct.

2. The UNDT found that Mr. Rugerinyange did not have standing, because while he is a former staff member, the application before the UNDT did not allege violations of the terms of his former appointment as a staff member. Rather, his application challenged the Secretary-General's decision to place him on administrative leave as an independent contractor. The UNDT found that the contested decision was governed by the terms of Mr. Rugerinyange's Individual Contractor Agreement (ICA) with UNOPS, which provided that he was not to be regarded as a staff member for any purpose.

3. For the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal.

Facts and Procedure

4. Mr. Rugerinyange is an independent contractor for UNOPS in Kigali, Rwanda working as an Associate Energy/Environment Officer with the Office of the United Nations High Commissioner for Refugees (UNHCR) under an ICA. He entered into ICA: 0208617-1001-M1-01 on 20 December 2019, which he signed on 30 December 2019. Mr. Rugerinyange was a staff member of the Organization prior to his engagement as an independent contractor.

5. On 24 August 2020, the UNHCR Inspector General's Office (IGO) issued a memorandum¹ to the Division of Human Resources (DHR), in which it suggested that DHR place Mr. Rugerinyange on administrative leave.

¹ The Respondent filed the memorandum (titled "DHR consideration of non-punitive administrative measures in respect to the subject of IGO investigation INV/2020/010, Mr. Samuel Nshuti Rugerinyange") with the Dispute Tribunal on an *ex parte* basis.

6. On 2 September 2020, the IGO sent a “Subject Notice of Investigation” to Mr. Rugerinyange, notifying him that it had received information of his possible misconduct. The IGO informed Mr. Rugerinyange that he was the subject of a formal investigation (under reference INV/2020/010). According to the IGO document, it was alleged that Mr. Rugerinyange: (a) “engaged with external entities, and in outside activities, resulting in real and apparent conflicts of interest”; and (b) “engaged in breaches of confidentiality and attempted fraud involving UNHCR”. The IGO provided information relevant to the investigation and advised Mr. Rugerinyange of his duty to cooperate and his due process rights. The IGO also sent him an “Acknowledgement and Oath of Confidentiality”, which Mr. Rugerinyange signed on the same day.

7. On 4 September 2020, the IGO interviewed Mr. Rugerinyange as a part of the investigation into his conduct. On the same day, the Director, DHR placed Mr. Rugerinyange on administrative leave with pay.

8. On 14 September 2020, Mr. Rugerinyange filed an application for suspension of action pending management evaluation before the UNDT against the decision to place him on administrative leave with pay during the investigation. The case was registered with the UNDT Nairobi Registry as Case No. UNDT/NBI/2020/079.

9. On 2 October 2020, the Secretary-General filed his reply, arguing that the UNDT did not have jurisdiction to consider the application because Mr. Rugerinyange was not a staff member and thus had no standing.

10. On 9 October 2020, the UNDT issued Order No. 198 (NBI/2020), “Order on an Application for Suspension of Action Pending Management Evaluation” (UNDT Order). The UNDT found that Mr. Rugerinyange did not have standing, because while he was a former staff member, the application before the UNDT did not allege violations of the terms of his former appointment as a staff member. Rather, his application challenged the Secretary-General’s decision to place him on administrative leave as an independent contractor.

11. The UNDT found that the contested decision was governed by the terms of Mr. Rugerinyange’s ICA with UNOPS, which provided that he was not to be regarded as a staff member for any purpose. Under the ICA, disputes should be resolved amicably or referred to UNCITRAL arbitration.

12. The UNDT held that Mr. Rugerinyange's application for suspension of action was not receivable *ratione personae* and dismissed it in its entirety.

13. On 23 October 2020, Mr. Rugerinyange submitted his appeal of the UNDT Order. On 2 December 2020, the Secretary-General filed his answer.

Submissions

Mr. Rugerinyange's Appeal

14. Mr. Rugerinyange submits that the UNDT erred in finding that, because his application was not based on a violation of the terms of his appointment as a staff member, he has no standing before the UNDT. He has standing before the UNDT because the decision to place him on administrative leave resulted from an investigation into alleged misconduct dating back to his appointment as a staff member.

15. Mr. Rugerinyange submits that the UNDT failed to be impartial and objective when it did not address some of his contentions regarding defects in the misconduct investigation and alleged violations of Rwandan employment law. For example, the UNDT did not address his contention that after four years of uninterrupted service with UNHCR, he was a staff member under UNHCR's administrative rules.

16. Mr. Rugerinyange submits that the Secretary-General denied him the ability to fully prepare his defense by blocking access to his e-mail account, and because the Subject Notice of Investigation did not give sufficient information about the matter being investigated and the nature of the allegations against him.

17. Mr. Rugerinyange requests that the Appeals Tribunal reverse the UNDT's Order and find his application for suspension of action receivable. He requests that the Appeals Tribunal find that his rights were violated and order the Secretary-General to pay him damages for irreparable harm caused by the contested decision. He further requests that the Appeals Tribunal order the IGO to investigate the flaws in Investigation INV/2020/010.

The Secretary-General's Answer

18. The Secretary-General submits that the UNDT properly held that Mr. Rugerinyange's application was not receivable. He cites the terms of the ICA and the UNDT Statute, and argues that Mr. Rugerinyange, as an independent contractor, does not have standing before the UNDT to challenge a decision arising under the terms of the ICA and the application was not receivable *ratione personae* or *ratione materiae*. The question of when the conduct being investigated took place is not relevant to the determination of the UNDT's jurisdiction.

19. The Secretary-General submits that the UNDT properly refrained from addressing the substantive claims regarding defects in the investigation and alleged violations of Rwandan employment law.

20. The Secretary-General requests that the Appeals Tribunal uphold the UNDT's Order and dismiss the appeal.

Considerations

21. The issue on appeal is whether the UNDT erred when it held that the application for suspension of action pending management evaluation against the decision to place Mr. Rugerinyange on administrative leave with pay during an investigation for possible misconduct was not receivable *ratione personae*.

22. In reaching its decision, the UNDT acknowledged that Mr. Rugerinyange had previously been a staff member. However, according to the UNDT, the provisions of Article 3(1)(b)² of the UNDT Statute did not apply to the present case, since the issue under consideration did not derive from possible violations of his terms of appointment, but rather from the Secretary-General's decision to place him on administrative leave with pay when his status was no longer that of a staff member, but rather that of an individual contractor.³

² The UNDT mistakenly referred to Article 2(1)(b).

³ Impugned Judgment, para. 6.

23. The UNDT went further and cited paragraph 6.1 of the Agreement signed by Mr. Rugerinyange on 30 December 2019, according to which: ⁴

The Individual Contractor shall have the legal status of an independent contractor vis-à-vis UNOPS, and shall not be regarded for any purpose, as a staff member of UNOPS or any other entity of the United Nations ... under the Staff Regulations and Rules of the [Organization] or as an “official” of UNOPS or [any] other entity of the United Nations for the purposes of [the] Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the [United Nations] on 13 February 1946 ... Accordingly, nothing within or relating to the Agreement shall be interpreted as establishing a relationship of employer and employee or Principal and agent between UNOPS and the individual contractors.

24. The UNDT also referred to paragraphs 17.1 and 17.2 of the same Agreement, which deal with the Amicable Settlement of Disputes and Arbitration respectively, and stipulate that “[i]n the event of a dispute arising out of or in relation to the Agreement, or the breach[,] termination or invalidity thereof ..., UNOPS and the Individual Contractor shall resolve the dispute amicably” and that “[i]n the event the parties are unable to resolve the Dispute amicably, the dispute may be referred by either of the Parties to arbitration in accordance with the UNCITRAL Arbitration Rules then in effect”.⁵

25. In his appeal, Mr. Rugerinyange claims that the UNDT erred when it found that the application was not receivable on the ground that it was not based on a violation of the terms of appointment when he was a staff member. He contends that the decision to place him on administrative leave for an investigation of possible misconduct relates to actions allegedly committed in 2016 and 2017, during which period he was a staff member.

26. Mr. Rugerinyange further claims that the UNDT omitted a significant detail and that the UNDT “fell short of impartiality and objectivity”, choosing pieces of evidence to consider and ignoring significant material evidence brought before it.

27. Mr. Rugerinyange’s contentions are unsubstantiated. There is no dispute that Mr. Rugerinyange entered into an ICA on 20 December 2019. The contested decision to place him on administrative leave with pay during the completion of the investigation of possible misconduct was issued on 4 September 2020, following the notice of investigation on

⁴ Impugned Judgment, para. 7.

⁵ *Ibid.*, para. 8.

2 September 2020. It is true that a former staff member has legal standing to file an application before the UNDT in order to contest a decision that is related to the former terms of appointment when he or she was a staff member. However, Mr. Rugerinyange's assertion that his case should be received if the contested administrative decision was related to his former appointment as a staff member is not as simply determined as contended for by him. This impugned decision must also affect the terms of his (former) appointment.

28. In the present case, what Mr. Rugerinyange requests is to challenge an administrative decision directly affecting the terms of his new contract as an individual contractor. Therefore, even if the administrative decision of placing him on administrative leave with pay referred to facts which had occurred while he was still a staff member, as he claims, it affects the *new* contract and his *new* capacity as an independent contractor. As such, he has no legal standing before the UNDT.

29. Although we have so decided by reference to the Statute governing access to the UNDT, this conclusion is backed by the latest Report of the Advisory Committee on Administrative and Budgetary Questions, in paragraph 26 (A/75/560, 30 October 2020), which states that:

With regard to the recourse currently available to non-staff personnel, the Advisory Committee was informed, upon enquiry, that those personnel have access to the informal system of justice, with the exception of structured mediations resulting in a written settlement enforceable by the Dispute Tribunal. They do not have access to the formal system of the administration of justice with respect to appeals, but do have the right to file a formal complaint of harassment, including sexual harassment, discrimination and abuse of authority under the Secretary-General's bulletin ST/SGB/2019/8, and to avail themselves of arbitration.

30. In reaching its decision, the UNDT was not bound to rebut each and every argument of a party, provided that it conveys its reasoning for the findings.⁶ The UNDT Judgment in this case, although succinct, did treat the issues under examination accordingly. Contrary to what Mr. Rugerinyange states, there is no omission in the Judgment. Mr. Rugerinyange has further raised some serious issues in the UNDT Judgment, casting doubt upon the UNDT Judge's impartiality. However, a Judge is not partial just because he or she did not decide in favour of one party.

⁶ *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47.

31. Mr. Rugerinyange also seems to raise in this appeal a number of arguments related to the merits of the case. These arguments could only be assessed if the threshold of receivability was met. This did not happen for reasons which we have concluded were correct.

32. Mr. Rugerinyange has failed to demonstrate that the UNDT erred in its Judgment. The appeal accordingly fails.

Judgment

33. The appeal is dismissed and Order No. 198 (NBI/2020) is affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Halfeld, Presiding
Juiz de Fora, Brazil

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 27th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar